

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Rulemaking to Amend Parts 1, 2, 21 and 25</b>	)	<b>CC Docket No. 92-297</b>
<b>of the Commission's Rules to Redesignate</b>	)	
<b>the 27.5-29.5 GHz Frequency Band, to</b>	)	
<b>Reallocate the 29.5-30.0 GHz Frequency Band,</b>	)	
<b>to Establish Rules and Policies for Local</b>	)	
<b>Multipoint Distribution Service and for</b>	)	
<b>Fixed Satellite Services</b>	)	

**To: The Commission**

**COMMENTS OF  
CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.**

Central Texas Telephone Cooperative, Inc. ("CTTC"), by its attorneys, hereby respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Sixth Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding. CTTC strongly supports the June 30, 2000 sunset of the Local Multipoint Distribution Service ("LMDS") in-region eligibility restriction<sup>1</sup> and vigorously opposes any extension of the restriction as applied to rural telephone companies.

CTTC is a subscriber-owned cooperative local exchange company which prides itself on providing state of the art telecommunications services to its members.<sup>2</sup> Through its wholly-owned

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<sup>1</sup> The in-region restriction is codified at 47 C.F.R. § 101.1003(a).

<sup>2</sup> CTTC provides service in portions of Comanche, Mills, San Saba, Menard, Concho, Tom Green and McCulloch counties in Texas. CTTC's telephone service area falls within three BTAs: Brownwood (BTA 57), Dallas (BTA 101) and San Angelo (BTA 400).

subsidiary, Central Texas Telephone Investments, Inc. ("CTTI"), CTTC is the A and B block LMDS licensee in the Brownwood and San Angelo, Texas Basic Trading Areas ("BTAs") and one of the very few licensees to actually initiate service using LMDS. Among other services, CTTC offers competitive voice and data services to areas currently served by GTE. CTTC is extremely familiar with the in-region restriction, which forced CTTC to divest portions of the Brownwood BTA.

## I. DISCUSSION

In the *NPRM*, the Commission notes that pursuant to Rule Section 101.1003(a)(1), the in-region restriction will terminate unless the Commission "extend[s] its applicability based on a determination that incumbent [local exchange carriers] LECs or incumbent cable companies continue to have substantial market power in the provision of local telephony or cable television services."<sup>3</sup> The Commission further notes that consistent with its findings in the *NPRM*<sup>4</sup> this standard would suggest that the Commission extend the applicability of the eligibility restriction.<sup>5</sup> The Commission, however, has "significant questions" about whether the current standard is the appropriate one for evaluating whether to extend the restriction.<sup>6</sup> Accordingly, the Commission seeks comment on what standard should apply.<sup>7</sup>

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<sup>3</sup> See *NPRM* ¶ 40.

<sup>4</sup> In Section III. A. of the *NPRM* the Commission determined that incumbent LECs continue to hold dominant positions in the local exchange and local exchange access markets. See *NPRM* ¶¶ 13, 24.

<sup>5</sup> See *id.* ¶ 40.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* ¶ 42.

CTTC strongly supports the modification of the standard for evaluating whether or not to sunset the in-region restriction. The current Rule Section 101.1003(a)(1) standard is overly simplistic and biased toward regulation rather than innovation and market-based solutions. It is inconsistent with the Commission's general policy of favoring market solutions rather than regulation. The current standard also fails to consider numerous important factors which the Commission should consider in making its decision. For example, the current standard fails to consider the true costs of maintaining the restriction.

Eligibility restrictions are among the most severe forms of regulation. They impose significant social and economic costs, many of which -- such as the true impact on financial markets -- cannot be fully known or measured. The Commission should modify its standard for evaluating the sunset of the restriction to favor market forces rather than regulation and to account for the substantial costs (both known and unknown) which the in-region restriction imposes.

In evaluating whether to allow the in-region restriction to sunset, the Commission should apply a standard similar to that which it applied in rejecting the imposition of an eligibility restriction in the 39 GHz service.<sup>8</sup> Specifically, the Commission should allow the in-region eligibility restriction to sunset unless the Commission determines that open eligibility would result in a "significant likelihood of substantial competitive harm in specific markets"<sup>9</sup> and there is no other less burdensome or disruptive

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<sup>8</sup> See, *Amendment of The Commission's Rules Regarding The 37.0-38.6 GHz And 38.6-40.0 GHz Bands*, ET Docket No. 95-183, RM-8553, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, PP Docket No. 93-253, (1997) *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600 (39 GHz R&O).

<sup>9</sup> *Id.* ¶ 32.

means of redressing the substantial competitive harm. Under this proposed standard, the Commission should allow the in-region restriction to sunset. CTTC supports the use of this standard for the reasons discussed below.

In evaluating the potential competitive harm, the Commission should only allow competitive harm that is "substantial" to outweigh the societal harms caused by the eligibility restriction because the in-region restriction is a draconian regulatory measure with significant costs, and these costs can only be offset by "substantial" competitive harm. The in-region restriction imposes economic, social and regulatory costs by, *inter alia*, hindering the deployment of LMDS service to rural areas, distorting the operation of the marketplace by encouraging investment in competing wireless services and discouraging investment in LMDS, and causing rural telephone companies like CTTC to waste valuable resources jumping through regulatory hoops rather than deploying those resources to provide advanced broadband service to residents of rural areas.

The in-region restriction has discouraged the deployment of service to rural areas by restricting rural telephone companies from participating or attempting to participate in the provision of LMDS contrary to the goals of Section 309(j) of the Communications Act of 1934, as amended (the "Act"), and Section 706 of the Telecommunications Act of 1996 (the "1996 Act"). The restriction effectively prohibited many rural telephone companies from participating in the LMDS auctions and generally "chilled" the participation of many other rural telephone companies. Although CTTC participated in the auction and acquired two LMDS A Block licenses, CTTC's participation came at significant cost. CTTC spent considerable, time, energy and resources, defending a petition to deny based exclusively

on the in-region restriction, and ultimately divesting a portion of its license area.<sup>10</sup> These resources could have been far better spent actually deploying service to residents of central Texas. Because of the potential drain on resources, many rural telephone companies refrained entirely from participation.

By limiting the participation of rural telephone companies, the Commission effectively crippled the participation of the very providers that are most likely to deploy broadband service to rural areas. Rural telephone companies are committed to the rural communities they serve. Their owners, board members, and managers participate in the life and health of these rural communities. They are willing to accept a lower rate of return than large commercial wireless companies in order to ensure that they, their families and neighbors are able to receive the type and quality of services demanded by the community. Rural telephone companies see opportunity and long-term benefits, where others see only a low rate of return on a high-risk undertaking.

Past experience, and indeed the entire history of the rural telephone industry demonstrate that rural telephone companies are willing to deploy service to areas that large commercial companies will not. Yet, counter to Congress's and the Commissions goal of promoting the deployment of broadband services to rural areas, the in-region restriction limits rural telephone companies from deploying LMDS

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<sup>10</sup> See, *Requests for Waiver of the Commission's Rules Establishing Eligibility Restrictions on Incumbent LECs and Cable Operators in the Local Multipoint Distribution Service*, Order, 13 FCC Rcd 18694 (WTB 1998) ("Order"), *aff'd*, *Requests for Waiver of Section 101.1003(a) of the Commission's Rules Establishing Eligibility Restrictions on Incumbent LECs and Cable Operators in the Local Multipoint Distribution Service*, Memorandum Opinion and Order, DA 99-1642, released August 17, 1999, 1999 FCC LEXIS 3974 (August 17, 1999). The *Order* forced CTTC to divest four geographic regions from the Brownwood BTA with a total area of approximately 862 square miles and a dispersed population of 2,584 people. See Application of Central Texas Telephone Investments, Inc. for Partial Assignment of License, File No. 0000003401.

in their wireline service areas.

As noted above, the in-region restriction forced CTTC, through CTTI, to divest four geographic areas with a dispersed population of approximately 2,584 cooperative members. Unfortunately for these individuals, this was a great victory of form over substance. As CTTI demonstrated in a Petition for Reconsideration of the denial of its request for a waiver of the in-region restriction, the divested areas will not support stand-alone LMDS systems.<sup>11</sup> Rather than benefitting these individuals, the in-region restriction effectively forced CTTC to "abandon" them, thus denying them the promise of LMDS.

CTTC is able to deploy LMDS in rural areas by using LMDS as a component in its network rather than trying to deploy stand-alone LMDS systems. Even the Commission now acknowledges that LMDS is likely to be used as a wireless component in a network rather than as a stand-alone system.<sup>12</sup> Contrary to the Commission's findings in adopting the restriction,<sup>13</sup> by limiting the ability of CTTC and other rural telephone companies to deploy LMDS in-region, the restriction sacrifices efficiencies which might otherwise allow rural telephone companies to deploy LMDS in difficult to serve regions.

Because the in-region restriction imposes significant costs, such as hindering service to rural areas, and distorting the operation of the marketplace, it should only be extended in order to prevent a

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<sup>11</sup> See Petition for Reconsideration of Central Texas Telephone Investments, Inc. filed October 23, 1998, File No. 0000000093.

<sup>12</sup> *NPRM* ¶ 33.

<sup>13</sup> See *id.* ¶ 9.

substantial competitive harm. In addition to the gravity of the harm, the FCC must also consider the likelihood of its occurrence.

In order to justify an extreme measure, such as an eligibility restriction, there should be a "significant likelihood" of the substantial harm occurring rather than a mere risk of its occurrence because it is extremely difficult to predict the use and development of technology in today's highly innovative telecommunications markets. The marketplace is better suited than heavy handed regulation to create competition, and the more attenuated the possibility of the occurrence of harm, the more likely that the regulation will distort rather than facilitate the operation of the marketplace.

Most of the Commission's expert predictions regarding LMDS have not proved accurate. This is not surprising since the dynamic nature of today's telecommunications markets challenges the foresight of even the wisest prophets. Although the FCC based the in-region restriction in large measure on LMDS's anticipated use for facilities-based local exchange and video competition,<sup>14</sup> the Commission now acknowledges that licensees do not appear to be targeting these services.<sup>15</sup> LMDS has not emerged as a significant means of deploying competitive local exchange, video, or broadband services. There are still significant technical, regulatory, legal and business obstacles to overcome before the promise of LMDS becomes a reality, and the in-region restriction compounds these problems rather than contributes to their solution.

Applying the revised standard discussed above, the Commission should allow the in-region restriction to sunset as anticipated. Even assuming for the sake of argument that a rural telephone

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<sup>14</sup> See *id.* ¶ 6.

<sup>15</sup> See *id.* ¶ 32.

company were to acquire and warehouse the LMDS spectrum covering such company's wireline service area, there would be no "substantial" competitive injury. Contrary to the FCC's expectations, LMDS is not a unique source of competition. There are myriad sources of competition including wireless, wireline and satellite services. The "anti-competitive" acquisition of an LMDS license would not result in a substantial competitive harm because such acquisition would not be able to forestall competition.

Moreover, such behavior is extremely unlikely to occur. Rural telephone companies lack the incentive and ability to acquire LMDS spectrum just to "forestall" competition because there are so many other avenues of competition. Rural telephone companies have no incentive to waste their precious resources in this manner. In order to compete and thrive in today's telecommunications market place, rural telephone companies must deploy their resources to innovate, improve and expand rather than to stall, stagnate and delay.

CTTC acquired its LMDS licenses to expand its service area and service offerings. CTTC has integrated its LMDS system into its wireline system and taken advantage of its existing infrastructure and efficiencies. CTTC is proud to be one of the first LMDS licensees to deploy competitive and advanced service by offering bundled broadband service as well as basic service. CTTC regrets, however, that the restriction forced CTTC to abandon many of its subscribers. Accordingly, CTTC anxiously awaits the sunset of the restriction.

## **II. CONCLUSION**

The Commission should modify the standard for evaluating the sunset of the LMDS in-region restriction to reflect the significant economic and social costs which the in-region restriction imposes on



the public and the telecommunications industry. Specifically, the Commission should allow the restriction to sunset unless open eligibility would pose a significant likelihood of substantial competitive harm in specific markets, and there are no other less burdensome or disruptive means of redressing the harm. As demonstrated above, open eligibility will not create a significant likelihood of substantial competitive harm in rural areas because there are simply too many alternate sources of competition for a rural telephone company to be able to forestall competition by acquiring an LMDS license that overlaps its wireline service area. Because there is no significant likelihood of substantial competitive harm, the Commission should allow the restriction to sunset as anticipated.

Accordingly, CTTC respectfully requests that the Commission allow the LMDS in-region restriction to sunset as anticipated.

Respectfully submitted,

**CENTRAL TEXAS TELEPHONE  
COOPERATIVE, INC.**

By: \_\_\_\_\_/s/

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